IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 406 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUKHLAL SAHADEV YADAV & 2 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MS. SHILPA R SHAH for Appellant(s) : 1 & 3 appointed by Legal Aid Committee.

MR PK SHUKLA for Appellant No.2 appointed by Legal Aid Committee.
MR KT DAVE ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 22/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. The appellants ('the accused' for short) were tried by the learned Additional City Sessions Judge, Court No.10, City Sessions Court, Ahmedabad in Sessions Case No. 272 of 1999 for commission of the offence punishable under Section 20 (b) (ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short), arraigned on the charge of having found with contraband article 'charas' weighing 178 grams, 163 grams and 193 grams respectively and also accused No.1 was found with charas weighing 1228 grams from his shoulder bag, without pass or permit, when they were intercepted and apprehended at the premises near Ramdevpeer temple, next to Ramlal's Akhada, near Lalbahadur Shastri Stadium, Bapunagar, Ahmedabad, on the basis of the prior information received by P.W.3, K.C. Chudasma, Senior Police Inspector, City Crime Branch, Ahmedabad. At the end of the trial, the accused were found guilty of the offence with which they were charged and as their complicity

is proved, the learned Judge of the trial Court convicted them vide judgment and order dated 27.4.2001 for commission of the offence punishable under section 20 (b) (ii) of the NDPS Act and sentenced each of them to suffer R.I. for ten years and fine of Rs.1 lakh and i.d., each of the accused to undergo R.I. for further period of one year.

2. Aggrieved by the aforesaid judgment and order of conviction and sentence, the accused have filed this appeal under Section 374 of the Code of Criminal Procedure ('the Code' for short), from jail.

3. Briefly stated, the prosecution case as disclosed from the FIR and unfolded during trial, is as under:

2.1. P.W.3, K.C. Chudasma, Senior P.I. of City Crime Branch, Ahmedabad, through his two police constables, Kaushik and Himatsingh Narubha, received a secret information on 8.9.1999 at

about 15.30 P.M.,. when he was in his office to the effect that a person, named Mukhlal Sahadev Yadav (A-1), a resident of the slums, near Ramdevpeer temple, next to Ramlal's Akhada, near Lalbahadur Shastri Stadium, Bapunagar, Ahmedabad, was engaged in the illegal activity of possessing a large quantity of narcotic drugs and/or psychotropic substances and that the said A-1 has also his accomplices who were in the process of disposing of the narcotic drugs and/or psychotropic substances in the open market.

3.2. On receipt of the said information, P.W.3, K.C. Chudasma, made necessary entry in this regard in the station diary and also sent copies thereof to his official superior, i.e., Assistant Police Commissioner, Crime Branch, Ahmedabad. Thereafter he requisitioned service of two persons to act as panchas. After procuring presence of two panchas, he conveyed the said secret information to the two panchas and also to the members of the raiding party. Accordingly, he prepared the preliminary panchnama to the said

effect.

3.3. After preparing the preliminary panchnama, he along with the panchas and the members of the raiding party, went towards Lalbahadur Shastri Stadium and thereafter they proceeded towards the premises as per the description given in the secret information from where A-1 was operating drug trafficking. Thereafter he approached the hut of A-1 where it was found that the door was open and upon peeping in, it was clear that there were two cots within the said premises. On one of the cots two persons were found seated and on the other cot one person i.e., A-1 was found seated. P.W.3, K.C. Chudasma thereafter identified himself and also conveyed the secret information received by him and also informed them about the narcotic substance being carried by them. The accused were given written memo in compliance of Section 50 of the NDPS Act. P.W.3, K.C. Chudasma also informed the accused persons that as per the secret information received by him, he wants to search them and if

they prefer that they should be searched in presence of a gazetted officer or a magistrate, he would make arrangement for the same but the accused did not opt for that and informed P.W.3, K.C. Chudasma that they may be searched by him. Thereupon, P.W.3, K.C. Chudasma searched the person of all the three accused in presence of the panchas and members of the raiding party. During the course of search of A-1, from the right side pocket of the trouser put on by him, one plastic bag containing two pieces of blackish substance which was charas was recovered. Similarly, from the left side pocket of the trouser put on by A-2 also a blackish substance was found which was also charas. Likewise, during the search of the person of A-3 also from the left side pocket of the trouser put on by him one plastic bag containing two pieces of blackish substance was found which was charas. Thereafter the contraband article charas recovered from each of the accused was weighed by calling a person who was equipped with weighing scale and for the preliminary analysis he called for the

service of an officer of FSL, Ahmedabad, and also called a photographer.

3.4. As per further case of the prosecution, thereafter search was carried out in the premises in question but nothing incriminating was found from the utensils, etc., lying in the premises. However, it was found that beneath the cot upon which A-2 and A-3 were seated, a red/maroon coloured shoulder bag was found located and on search thereof, the same was found to contain some clothes but on further search, it was found to contain a plastic bag which was full of slabs of a similarly looking blackish substance. On being taken out of the said plastic bag, it was found that there were four slabs of a similarly coloured blackish substance and on being questioned, the accused admitted that the same was also charas and on weighing it was found that the said substance was 1228 grams. A-1 indicated that the said shoulder bag belongs to A-2 and A-3 who had brought the same from Uttar Pradesh. On being questioned, A-2 and A-3 admitted that the

clothes contained in the said shoulder bag belongs to them and they also admitted that the narcotic substance contained therein was also brought over by them from Uttar Pradesh and that they were instructed by their master Chandrabhan Mauriya to sell and/or appropriately dispose of the same at Ahmedabad.

3.5. As per further case of the prosecution, J.D. Sharma, an officer of the FSL was called for preliminary analysis of the contraband article. He was introduced to the panchas and he was searched but nothing incriminating was found from the said officer. Thereafter necessary formalities of seizure and sealing were made in the presence of the panchas and members of the raiding party and separate marks were given to the muddamal. Thereafter search memo and arrest memo were prepared on the spot and served to the accused. Muddamal was handed over to the PSO in sealed condition. P.W.3, K.C. Chudasma filed complaint against the accused and thereafter the accused together with the panchnama, seized

muddamal and other relevant documents were also handed over to PSO, DCB Crime Branch Police Station, where the offence was registered against the accused as Prohibition CR No.5019 of 1999. On completion of the raid, P.W.3, K.C. Chudasma also informed his official superior about the successful raid, in writing.

3.6. As per further case of the prosecution, further investigation was entrusted to P.W.7, Bhailalbhai T. Karolia, Ex.62. After taking over the investigation, he recorded the statement of the members of the raiding party as well as panch witnesses and concerned PSO and forwarded the muddamal for analysis to FSL Ahmedabad and thereafter on receipt of the report from the FSL certifying that the contraband article sent for analysis was charas and as sufficient incriminating evidence was found against the accused, he filed charge-sheet against them for commission of the offence punishable under Section 20 (b) (ii) of the NDPS Act, in the City Sessions Court, Ahmedabad.

3.7. The learned Additional City Sessions Judge, Ahmedabad to whom the case was made over for trial, framed charge against the accused for commission of the offence punishable under section 20 (b) (ii) of the NDPS Act which was read over and explained to the accused. As the accused pleaded not guilty to the charge and claimed to be tried, they were put to trial and tried in Sessions Case No. 272 of 1999.

3.8. To prove the culpability of the accused, the prosecution has examined and relied upon the oral testimony of 7 witnesses, the details of which are given in para 10 of the impugned judgment and order. They are as under:

PW. No	Name and particulars of the witness	Ex. No.
1	Maheshkumar Jayantilal Shah (Panch witness)	12
2	Krishnakumar M.Gohil (complainant)	21
3	K.C. Chudasma, Sr.Police Inspector and leader of the raiding party	23
4	Prabhatsinh V.Chauhan, PSO DCB Crime Branch	54

PW. No	Name and particulars of the witness	Ex. No.
5	Ghumaji Shivaji,Crime Writer Head	59
6	Bhaijibhai A.Dabhi	61
7	Bhailalbhai T. Karolia, Investigating Officer	62

3.9. To prove the case against the accused, the prosecution also produced and relied upon a number of documents, the details of which are mentioned in paragraph 11 of the impugned judgment and order.

3.10. After recording of the evidence of the prosecution witnesses was over, the learned Judge of the trial Court explained to the accused the circumstances appearing against them in the evidence of the prosecution witnesses and recorded their further statement as required under Section 313 of the Code. In their further statement, the accused denied the case of the prosecution in toto. They reiterated that they have been wrongly roped in a false narcotic case though they were not found with the contraband

article charas. So far as A-2 and A-3 are concerned, they have stated that they have been entrapped when they were on road and they do not know anything about the contraband article charas. So far as A-1 is concerned, he has stated that he was serving as a watchman in the firm named Tiger Security Company. He was not the owner of the hut. He was also falsely trapped in the case though he was on road. He has examined one witness Firozkhan Shamsuddin Malek, in his defence as well as he himself has also entered into the witness box and gave evidence on oath. The sum and substance of the further statement of the accused is that they are falsely implicated in the narcotic case.

3.11. On appreciation, evaluation, analysis and scrutiny of the evidence adduced by the prosecution, the learned Judge of the trial court held that so far as ownership of the muddamal i.e., shoulder bag is concerned, great doubt is raised since there is nothing on record to suggest that the said shoulder bag to be of

ownership or in possession of any of the accused. It is also held that there is nothing on record to establish that the premises raided upon is of the ownership or in possession of any of the accused. However, from the testimony of the police officers and independent panch witness as well as documentary evidence there is no reason to disbelieve the version of the prosecution that the accused were found from the scene of offence and from their possession contraband article charas was recovered. Therefore, complicity of the accused for commission of the offence under section 20 (b) (ii) has been established as from each accused contraband article charas was found. He, therefore, held the accused guilty of the offence under section 20 (b) (ii) of the NDPS Act and sentenced them to suffer RI for ten years and fine of Rs.1 lakh and in default of payment of fine, RI for further one year, which has given rise to instant appeal at the instance of the accused from jail.

4. Ms. Shilpa R. Shah, learned advocate for

accused Nos.1 and 3 and Mr. P.K. Shukla, learned advocate for accused No.2, have contended that the prosecution has examined the members of the raiding party who have not followed the mandatory and statutory provisions contained under the NDPS Act and, therefore, on account of non-compliance of the provisions of NDPS Act, the prosecution evidence cannot be relied upon and cannot be acted upon. It is also contended by them that the learned Judge of the trial court has misdirected himself in relying upon the oral testimony of P.W.3, K.C. Chudasma, Ex.23, in respect of the alleged secret information, search of the person of the accused, seizure of muddamal and the arrest of the accused at the scene of the offence. They also tried to demonstrate by reading the evidence of the witnesses as to why their evidence cannot be relied upon. It is also pointed out by them that the prosecution has failed to establish the fact that the muddamal contraband article reached the FSL intact and there was possibility of tampering with the muddamal on its journey from the time of seizure

and filing of the complaint till it reached to the FSL. According to them, there is non-compliance of the provisions of Sections 52 and 55 of the NDPS Act. It is also contended by them that A-1 has examined his defence witness as well as he himself has entered into the witness box and gave evidence on oath but the learned Judge of the trial court has overlooked the said evidence which has resulted into miscarriage of justice as the learned Judge has not considered the said defence in its true and proper perspective. According to them, the learned Judge of the trial court has erred in not appreciating the submissions advanced by the defence that the muddamal was not properly sealed and there was all possibilities of tampering with it during its journey from the time of seizure and sealing till its reaching FSL. However, the learned Judge of the trial court has not appreciated the said defence in its true perspective. The learned Judge of the trial court has erred in holding that the muddamal charas was properly and legally handled and it was not

tampered with till it reached at FSL Ahmedabad in sealed intact condition. By reading evidence in this regard Ms. Shilpa Shah and Mr. Shukla tried to convince this court that the muddamal was tampered with on the way from the police station to FSL Ahmedabad.

4.1. On the aforesaid premises, it is submitted by them that the prosecution has failed to establish the charge levelled against the accused beyond reasonable doubt and therefore, the impugned judgment and order of conviction and sentence deserves to be quashed and set aside by allowing this appeal and thereby acquitting the accused of the offences with which they were charged. They, therefore, urged to allow the appeal.

5. In counter submission, Mr. KT Dave, learned APP has submitted that by voluminous evidence produced by the prosecution, the complicity of the accused is proved beyond reasonable doubt. The accused were found and

caught red-handed with contraband article charas from the pocket of the trouser of each of them when they were intercepted by P.W.3, K.C. Chudasma. He has also submitted that after following and observing the mandatory and statutory provisions contained under the NDPS Act, the contraband article was seized and sealed in presence of the members of the raiding party as well as panchas. It is also submitted by him that the report of FSL in terms certified that the contraband article which was sent for analysis was charas. It is asserted by him that the prosecution has successfully established that the sample sent to FSL Ahmedabad was not tampered with during the course of its journey from the stage of seizure and filing of the complaint till reaching at FSL. According to him, if the evidence of the members of the raiding party is of sterling quality then there is no reason to discard their evidence and on the basis of the evidence of the members of the raiding party, order of conviction can be passed.

5.1. On the aforesaid premises, according to Mr. Dave, learned APP, the prosecution has established the case against the accused beyond reasonable doubt and, therefore, the learned Judge of the trial court has rightly recorded the order of conviction and sentence. He further submitted that the impugned judgment and order does not call for any interference of this court in this appeal and as the appeal lacks merit, it deserves to be dismissed. He, therefore, urged to dismiss the appeal.

6. This Court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a compete and comprehensive appreciation of all vital features of the case and the entire evidence on record which is read an re-read by the learned advocates for the parties with reference to broad and reasonable probabilities of the case. In light of the caution sounded by the Supreme court while dealing with NDPS cases, this court has examined

the entire evidence on record for itself independently of the learned Judge of the trial Court and considered the arguments advanced on behalf of the accused and infirmities pressed, scrupulously with a view to find out as to whether the learned Judge of the trial Court has rightly recorded the order of conviction and sentence.

7. At the outset, be it noted that to combat illicit drug traffic and drug abuse, both at the national and international levels, the penal provisions contained under the NDPS Act are stringent and punishment thereunder is harsh, therefore, as per the settled principles of criminal jurisprudence, the Court of law must insist on the strict compliance of the safeguards provided under the statutory provisions contained thereunder.

8. In this connection, it would be appropriate to refer to the observations made by the Supreme Court in the case of Bharatbhai

Bhagwanjibhai v. State of Gujarat, AIR 2003 SC 7. In para 1 of the said judgment, the Supreme Court has observed as under:

> “The Statement of Objects and Reasons of the NDPS Act categorically records the inadequacy of the existing legislation to combat illicit drug traffic and drug abuse, both at the national and international levels and it is by reason of such deficiencies in the existing laws, the legislature thought it prudent to consolidate the same and bring about a comprehensive legislation so as to meet the exigencies of the situation. A plain look at the provisions of the NDPS Act read with the Statement of Objects and the Preamble would depict the intent of legislature as regards the offences under the said consolidated legislation, which stands expressed in rather explicit language as one of the most heinous ones in nature. This Court, however, in consonance with criminal jurisprudence of the country has been insisting on strict compliance of the

safeguards provided under the statute so as to be in tune therewith".

9. In view of the stringent penal provisions and harsh punishment provided thereunder and in view of the observations made by the Supreme Court in the above referred to judgment, we have to find out as to whether in instant case strict compliance of the safeguards provided under the statute have been observed by the P.W.3, K.C. Chudasma, Sr. Police Inspector during the course of search of the accused and seizure of the muddamal, contraband article, charas.

10. In this connection, we shall first refer to the testimony of P.W.1, Maheshkumar Jayantilal Shah, a panch witness, Ex.12 (pages 89 to 108 of the paper book). He has, inter alia, testified that on 8.9.1999 when he was passing through Jamalpur, a police officer intercepted him. One Mukeshbhai was along with the said police constable. The police officer informed him about

the secret information received by him and thereafter, he and one Mukeshkumar Mahavirprasad Pal were taken to Crime Branch Police Station where they were thoroughly informed about the secret information received by the police officer and thereafter preliminary panchnama was drawn in their presence and he and another panch put their signatures and thereafter the raid was carried out in their presence. In his examination-in-chief he has given complete account about the manner in which the raid was carried out. He has also stated about the necessary compliance of Section 50 of the NDPS Act and in their presence contraband article charas was recovered from the pocket of the trouser of the three accused persons. He has also testified the manner in which the contraband article was seized, sealed and handed over to PSO.

10.1. This witness has been cross-examined by the learned advocate for the accused at length. In short, he has deposed as per the panchnama

Ex.27 (pages 563 to 582 of the paper book). A perusal of the cross-examination at its entire length and breadth, we could not notice a single discrepancy which would impeach the credibility of the deposition of this witness.

11. The prosecution has thereafter examined P.W.2, K.M. Gohil, Ex.21 (pages 109 to 122 of the paper book). He has deposed that in the year 1999 he was working as PSI in Crime Branch. Two police constables conveyed the secret information to P.W.3, K.C. Chudasma, Sr. P.I. which was reduced into writing in the police station diary by P.W.3, K.C. Chudasma and intimation in this regard was also sent to the official superior by P.W.3, K.C. Chudasma. Thereafter in his presence, P.W.3, K.C. Chudasma requisitioned presence of two panchas. Two panchas and the raiding party were informed about the secret information received by P.W.3 and the first part of the panchnama was prepared. Thereafter he also accompanied P.W.3, K.C. Chudasma for raid. During

the raid, three accused were caught hold with contraband article charas. He has also testified that P.W.3, K.C. Chudasma has also complied with necessary formalities contained under Section 50 of the NDPS Act by informing all the accused as to whether they wanted to be searched in presence of a gazetted officer or a magistrate but they did not prefer to be searched in presence of a gazetted officer or a magistrate and opted that they may be searched by P.W.3, K.C. Chudasma and accordingly P.W.3, K.C. Chudasma searched their person and during the search from their trouser pocket contraband article charas was recovered from each of the accused. Thereafter it was seized and sealed for sending to FSL and thus the second part of the panchnama was also prepared in his presence. Thereafter he lodged a complaint against the accused persons on behalf of the Government, which is on record at Ex.22.

11.1. This witness was also cross-examined at length by the learned advocate for the accused.

During the cross-examination of this witness also he stuck to the same version which he has deposed in his examination-in-chief and in his cross-examination nothing substantial has been pointed out by the learned advocate for the accused which would impeach his credibility.

12. The prosecution has thereafter examined P.W.3, K.C. Chudasma, Ex.23 (pages 123 to 160 of the paper book). He was the leader of the raiding party and Senior Police Inspector of City Crime Branch, Ahmedabad. He has inter alia testified with regard to receipt of secret information through two police constables which he has reduced into writing and conveyed the same to his official superior. Thereafter he requisitioned service of two persons to work as panchas. After procuring two panchas, he informed the panchas as well as the members of the raiding party about the secret information received by him and accordingly the first part of the panchnama was prepared in presence of the panchas. Thereafter

raid was carried out. He has also deposed as to how the raid was carried out. He informed the accused about the secret information received by him and also informed them about the narcotic substance being carried by them. The accused were given written memo in compliance of Section 50 of the NDPS Act. He also informed the accused persons that as per the secret information received by him, he wants to search them and if they prefer that they should be searched in presence of a gazetted officer or a magistrate, he would make arrangement for the same but the accused did not opt for that and informed him that they may be searched by him. Thereupon, he searched the person of all the three accused in presence of the panchas and members of the raiding party. During the course of search of A-1, from the right side pocket of the trouser put on by him, one plastic bag containing two pieces of blackish substance which was charas was recovered. Similarly, from the left side pocket of the trouser put on by A-2 also a blackish substance was found which was also charas.

Likewise, during the search of the person of A-3 also from the left side pocket of the trouser put on by him one plastic bag containing two pieces of blackish substance was found which was charas. Thereafter the contraband article charas recovered from each of the accused was weighed by calling a person who was equipped with weighing scale and for the preliminary analysis he called for the service of an officer of FSL, Ahmedabad, and also called a photographer. He has also testified that thereafter search was carried out in the premises in question but nothing incriminating was found from the utensils, etc., lying in the premises. However, it was found that beneath the cot upon which A-2 and A-3 were seated, a red/maroon coloured shoulder bag was found located and on search thereof, the same was found to contain some clothes but on further search, it was found to contain a plastic bag which was full of slabs of a similarly looking blackish substance. On being taken out of the said plastic bag, it was found that there were four slabs of a similarly coloured blackish

substance and on being questioned, the accused admitted that the same was also charas and on weighing it was found that the said substance was 1228 grams. A-1 indicated that the said shoulder bag belongs to A-2 and A-3 who had brought the same from Uttar Pradesh. On being questioned, A-2 and A-3 admitted that the clothes contained in the said shoulder bag belongs to them and they also admitted that the narcotic substance contained therein was also brought over by them from Uttar Pradesh and that they were instructed by their master Chandrabhan Mauriya to sell and/or appropriately dispose of the same at Ahmedabad. He has also deposed that, J.D. Sharma, an officer of the FSL was called for preliminary analysis of the contraband article. He was introduced to the panchas and he was searched but nothing incriminating was found from the said officer. Thereafter necessary formalities of seizure and sealing were made in the presence of the panchas and members of the raiding party and separate marks were given to the muddamal. Thereafter search memo and arrest memo were

prepared on the spot and served to the accused. Muddamal was handed over to the PSO in sealed condition. He filed complaint against the accused and thereafter the accused together with the panchnama, seized muddamal and other relevant documents were also handed over to PSO, DCB Crime Branch Police Station, where the offence was registered against the accused as Prohibition CR No.5019 of 1999. On completion of the raid, he also informed his official superior about the successful raid, in writing. He has categorically stated about the compliance of the Sections 42 and 50 of the NDPS Act.

12.1. It may be noted that this witness was also cross-examined at length by the learned advocate for the accused in the entire length and breadth of his cross-examination no discrepancy in his evidence could be noticed by this Court which would impeach his credibility.

13. Thereafter the prosecution has examined

P.W.4, Prabhatsinh V.Chauhan, Ex.54 (pages 161 to 168 of the paper book). He was on duty at DCB Crime Branch on 8.9.1999. He has taken over charge from PSO Pravinsinh. When the charge was handed over to him, Pravinsinh informed him about recovery of narcotic drugs by Police Inspector K.C. Chudasma. Therefore he arrested the accused, took over the charge of the accused and the complaint and muddamal. He has also conveyed the information to the higher officials. He has registered the offence against the accused on the basis of the complaint filed by P.W.2, K.M. Gohil, PSI.

13.1. He has also been cross-examined at length. However, nothing substantial has been pointed out from his cross-examination which would doubt credibility of the oral testimony of this witness.

14. The prosecution thereafter examined P.W.5, Ghumaji Shivaji, Ex.59 (pages 169 to 178 of the paper book). He has testified that he was serving

as Crime writer Head, Crime Branch, Ahmedabad and as a part of his duty he has to handle muddamal and maintain registers. He has also brought original register and produced certified copies of the extracts of the secret information noted down in the station diary.

14.1. This witness has also been cross-examined by the learned advocate for the accused at length but nothing substantial has been brought out which would impeach the credibility of the testimony of this witness.

15. Thereafter the prosecution has examined P.W.6, Bhaijibhai A. Dabhi, Ex.61 (pages 179 to 182 of the paper book). He has inter alia testified that in September 1999 he was serving in the Economic Squad of the City Crime Branch, Ahmedabad. He was entrusted with the job of sending the muddamal to FSL. He has received the muddamal charas in a sealed condition which he handed over to FSL by travelling in a Government jeep. He also received the receipt from the FSL

about receipt of the said muddamal by FSL for analysis. He also took the said report and muddamal back on 13.10.1999 after analysis which he was handed over to P.W.7, BT Karolia, PSI who is the investigating officer with the written yadi at Ex.38.

15.1. This witness has also been cross-examined at length by the learned advocate for the accused but nothing substantial could be pointed out from his cross-examination which would impeach the credibility of the deposition of this witness.

16. Lastly the prosecution has examined P.W.7, Bhailalbhai T. Karolia, Ex.62 (pages 183 to 190 of the paper book). He is the investigating officer. He has inter alia testified that after the investigation was taken over by him, he recorded the statements of the witnesses, arranged to send muddamal to FSL. After receipt of the report from the FSL certifying that the muddamal sent for analysis

was charas and as incriminating evidence was found against the accused, he filed charge-sheet against the accused for commission of the offence under section 20 (b) (ii) of the NDPS Act in the City Sessions Court, Ahmedabad.

16.1. This witness has also been cross-examined by the learned advocate for the accused but nothing substantial could be pointed out which would impeach the credibility of this witness.

17. On reappreciation, reevaluation, reanalysis and close scrutiny of the evidence of the prosecution witnesses as discussed herein above, according to this court, P.W.3, K.C. Chudasma, Police Inspector is an officer under section 41 of the NDPS Act. However, he has complied with the statutory provisions contained under section 42 of the NDPS Act. The secret information which was received by him was not only reduced into writing in the station diary but also conveyed to his official superior. Besides this, evidence of all the police

officials including the panch witness is consistent with regard to the necessary compliance of Section 50 of the NDPS Act. All the witnesses have deposed in clear terms that all the accused were given option with regard to the search to be made in presence of a gazetted officer or a magistrate but none of the accused did opt for that and they volunteered that P.W.3, K.C. Chudasma can search them and on their volunteering P.W.3, K.C. Chudasma searched all the three accused persons and from the trouser pocket of all the accused persons, contraband article charas was recovered, which was seized and sealed and sent to PSO for sending it to FSL for analysis. Therefore, there is no manner of doubt that P.W.3, K.C. Chudasma complied with necessary compliance of mandatory provisions contained in sections 42 and 50 of the NDPS Act.

18. So far as the journey of the muddamal from the stage of interception of the accused, search of the person of the accused and seizure

and sealing of charas till it reached FSL Ahmedabad has also been duly proved and all the witnesses in this regard are consistent. As per the said evidence, the muddamal was not tampered with at any stage and it reached FSL Ahmedabad intact in sealed condition. The procedure for sealing was done as per the practice adopted by the police in NDPS cases. FSL report at Ex.39 clearly shows that the packets were sealed in plastic tin wherein seal of Police, DCB, Ahmedabad was affixed and on analysis of the muddamal, it was proved to be charas. Therefore, during journey of the muddamal from seizure and sealing till it reached FSL Ahmedabad for analysis there was no question of tampering with the said muddamal.

19. Independently this court has also perused the documents which are mentioned in paragraph 11 of the impugned judgment and from the perusal of the same it is clear that P.W.3, K.C. Chudasma has strictly followed the mandatory and statutory

provisions contained under the NDPS Act and no discrepancy could be noticed by this court on the part of P.W.3, K.C. Chudasma with regard to compliance of the provisions of NDPS Act.

20. On overall view of the matter, according to this Court, the mandatory and statutory provisions contained under Sections 42 (1), 42 (2), 43, 50, 52 and 57 of the NDPS Act have been adhered to and complied with by P.W.3, K.C. Chudasma and it is duly proved by the evidence of the prosecution witnesses. P.W.3, K.C. Chudasma had taken utmost care and caution while seizing and sealing the said contraband article. The apprehension of tampering with the muddamal can be ruled out as from the stage of recovery of the muddamal till its reaching the FSL, proper care and caution was taken by the police personnel. It is on the contrary clearly proved that it was in the safe hands of police personnel and it reached at FSL intact in sealed condition for chemical analysis.

21. It is the case of the defence that A-1 has examined D.W.1, Firozkhan S. Malek, Ex.66 (pages 191 to 192 of the paper book). He has deposed that he is working in the Central Jail, Sabarmati. He has testified that the jail authorities are maintaining a register wherein names of visitors who come to see the prisoners are noted. He has produced an extract of the register showing the names of the persons who have come to see the accused which is on record at Ex.67.

21.1. A-1 has also entered into the witness box and deposed on oath and his evidence is at Ex.70 (pages 193 to 196 of the paper book). He has testified that two unknown persons came to meet him in the jail and demanded Rs.50,000 from him and stated that they are panchas in the narcotic case against him and if he will not pay the amount they will depose against him in the court. Relying upon the aforesaid evidence, it is contended by Ms. Shilpa Shah and Mr. Shukla, learned advocates for the accused, that the

evidence of P.W.1, M.J. Shah cannot be relied upon. He has demanded money from A-1 and since A-1 did not pay the money he has deposed against him in Court.

21.2. We are not at all impressed with the aforesaid submission, because a perusal of Ex.67, which is an extract from the register kept in Sabarmati Central Jail showing the names of the visitors of the accused, no where there is mention about visit paid by the two panchas in Sabarmati Central Jail to meet A-1. Hence, this contention of Ms. Shah and Mr. Shukla has no merit and deserves to be rejected and accordingly it is rejected.

22. In view of the aforesaid evidence, there is no manner of doubt that when the accused were intercepted, apprehended and searched, they were found in possession of contraband article charas. Necessary formalities of search and seizure were complied with in presence of panchas and the statutory requirements and formalities contained

under the NDPS Act were followed and the samples were sent to FSL Ahmedabad for analysis after following the procedures under the NDPS Act.

23. On close scrutiny of the evidence on record, we find no infirmities in the findings, ultimate conclusion and the resultant order of conviction and sentence recorded by the trial court. We are in complete agreement with the said findings, ultimate conclusion and resultant order of conviction and sentence passed by the trial court, as according to us, no other conclusion is possible except the one reached by the trial court in the facts and circumstances of the case.

24. No new argument is advanced. No new criticism is offered. No infirmity in the reasoning of the trial court is pointed out. The evidence has been carefully analyzed and fully appreciated in the closely reasoned judgment with which we fully concur. We do not think it right to invest public time in reiterating the same reasoning in our language or giving the same

answers to the same criticism in our own words for the sake of form.

25. In aforesaid view of the matter, there is no reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence. The sentence awarded to the accused is minimum and has to be maintained.

26. On the wake up of the aforesaid, we are not inclined to interfere with the judgment and order of conviction and sentence recorded by the trial court and as the appeal lacks merit, it deserves to be dismissed.

27. For the foregoing reasons, the appeal fails and accordingly it is dismissed. Resultantly, the judgment and order dated 27.4.2001 passed by the learned Additional City Sessions Judge, Court No.10, Ahmedabad in Sessions Case No.272 of 1999 convicting each of the accused under Section 20 (b) (ii) of the NDPS

Act and sentencing each of them to undergo RI for ten years and fine of Rs.1 lakh i.d., R.I. for further period of one year, is confirmed and maintained.

(A.M. Kapadia, J.)

(K.A. Puj, J.)

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